NASUCA
NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

March 31, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service, CC Docket 96-45
Notice of ex parte communications

Dear Ms. Dortch:

On March 30, 2004, on behalf of the National Association of State Utility Consumer Advocates ("NASUCA"),[1] Wayne R. Jortner, Senior Counsel, Maine Public Advocate and Kathleen O'Reilly, counsel for NASUCA, met at various times with the following Federal Communications Commission ("Commission") Staff: Matt Brill (Senior Legal Advisor to Commission Abernathy); Scott Bergmann (Legal Advisor to Commissioner Adelstein); Jessica Rosenworcel (Legal Advisor to Commissioner Copps); Dan Gonzalez (Senior Legal Advisor to Commissioner Martin); William Maher (Chief, Wireline Competition Bureau); Eric Einhorn (Chief, Telephone Access Policy Division); and Vickie Robinson (Attorney Advisor, Wireline Competition Bureau). The meeting covered numerous universal service issues, but focused on the current level of the universal service fund contribution factor ("USF factor") and the need to restrain the growth in fund levels, while ensuring that the USF is used for the purposes directed by the Telecommunications Act of 1996. NASUCA's numerous proposals for these matters

[1] NASUCA is a non-profit, national association organized in 1979, whose members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA members operate independently from state utility commissions, primarily as advocates for residential ratepayers, although some members also represent small business ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

were discussed. The discussion noted that in order to preserve and advance universal service,[2] the first task is to preserve it.

The attached summary of issues was presented to and discussed with the Commission Staff.[3] *Inter alia*, the summary presents updated information on the fund requirements and the revenue assessed for the fund. NASUCA continues to support the continued use of interstate and international revenues -- appropriately calculated -- as the basis on which the USF contribution factor is determined.

A key part of the meetings was the discussion of the reasons for, consistent with the Act, providing federal support only to primary lines of eligible telecommunications carriers ("ETCs"). In this regard, NASUCA strongly supports the recent recommendation of the Joint Board.[4] Certain of the flaws in the arguments of those who support providing support to all ETC lines were also discussed. A separate summary of this specific issue was provided to the Commission Staff, in addition to documents on implementing a primary line support mechanism. The summary is attached to this letter; the additional documents are also being filed with this notice.

NASUCA urges the Commission to limit the growth in the USF by, among other things, restraining the support for ETCs generally and for non-primary lines served by ETCs specifically. NASUCA also urges the Commission to continue the collection mechanism that is fairest to the customers who ultimately pay for the USF -- a collection mechanism that is based on interstate and international usage, rather than mere access to the interstate and international networks.[5]

Respectfully submitted,

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Committee
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[2] 47 U.S.C. 254(b).

[3] Copies of this letter and the summaries were subsequently distributed to all members of the Federal/State Joint Board on Universal Service ("Joint Board") and to Joint Board Staff.

[4] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. February 27, 2004) ("Recommended Decision"), ¶¶ 56-71.

[5] It is not necessary at this time to seek the legislative changes that would be required in order to assess intrastate revenues for federal universal service purposes. The members of NASUCA have varying views on whether the use of intrastate revenues for federal universal service purposes would be appropriate.

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cc: Matt Brill; Scott Bergmann; Jessica Rosenworcel; Dan Gonzalez; William Maher; Eric Einhorn; Vickie Robinson; members of the Federal-State Joint Board on Universal Service; Joint Board Staff

ATTACHMENT 1
NASUCA UNIVERSAL SERVICE POSITIONS

I. UPDATING THE RECORD

In the interest of a complete record, the following charts and table supplement NASUCA's February 2003 and June 2003 comments in the contribution methodology phase of this proceeding. The charts and table show, for the last five years, trends in the dollar requirements of the USF, the revenues on which collections for the USF are based, and the contribution factor applied to interstate and international revenues. Recently, as the fund requirements have continued to grow and revenues have remained relatively flat, the Commission has used surplus dollars from the schools and libraries portion of the fund to suppress the growth in the contribution factor. For example, without the use of these surplus funds, the contribution factor in 2Q04 would have been 9.9%.[1]

These trends underscore the need for the Commission to bring the fund within control. Means to do so are discussed in the next section.

[1] See Public Notice, DA 04-621 (rel. March 5, 2004) at 2 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-621A1.pdf).

CHART 1
USF NEED AND REVENUE BASE

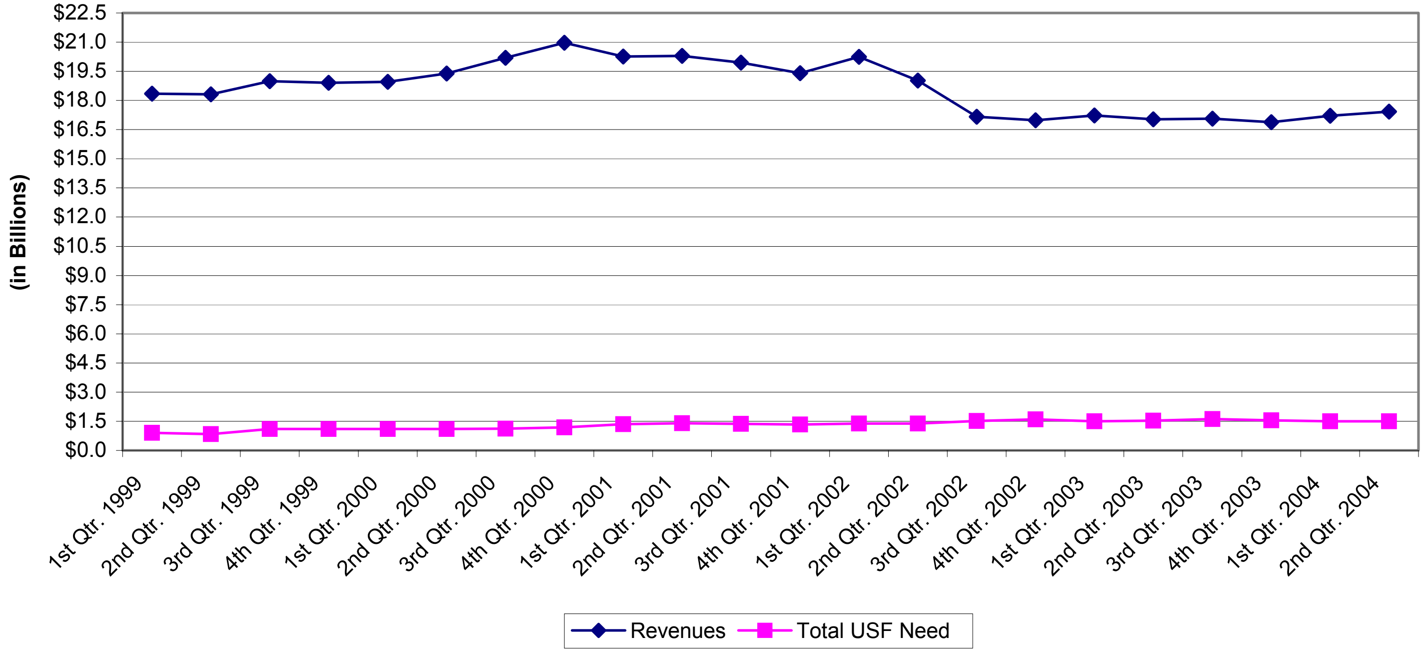

Chart 2
Universal Service Fund Need
and Revenue Base

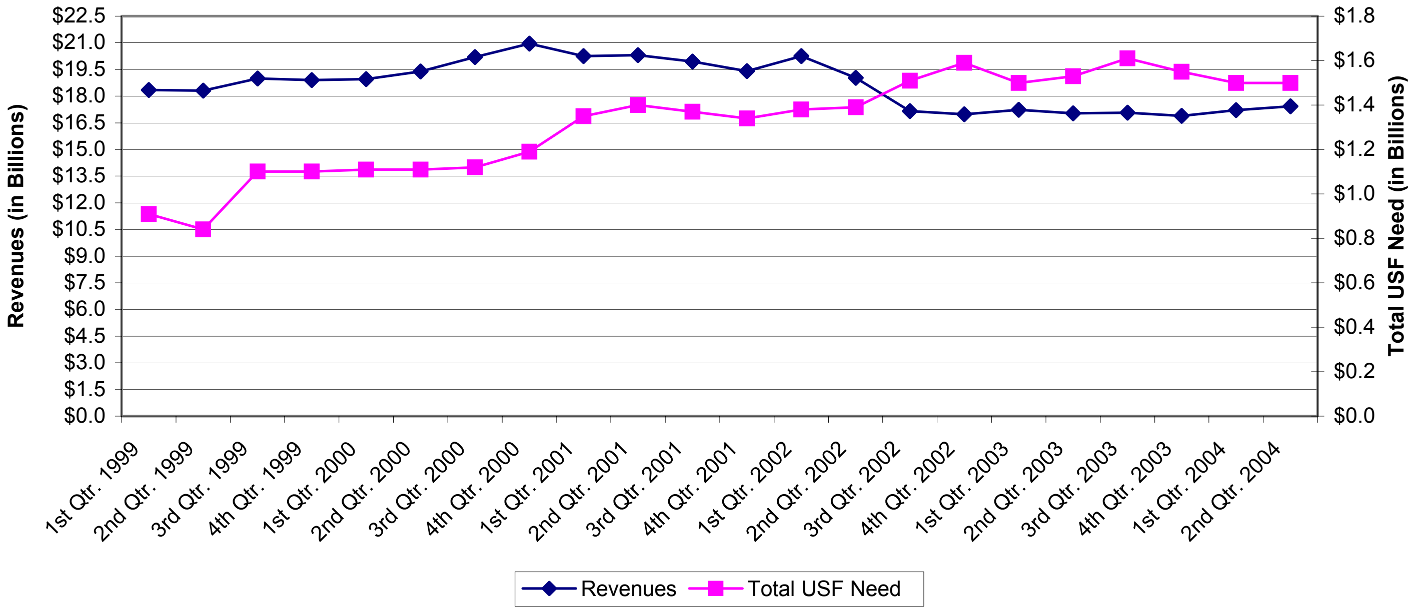

TABLE 1
USF NEEDS AND CONTRIBUTION BASE

	Revenues	**Total USF Need**	**Contribution Factor**
1st Qtr. 1999	18.35	0.91	0.050
2nd Qtr. 1999	18.31	0.84	0.046
3rd Qtr. 1999	18.99	1.10	0.058
4th Qtr. 1999	18.91	1.10	0.058
1st Qtr. 2000	18.96	1.11	0.059
2nd Qtr. 2000	19.38	1.11	0.057
3rd Qtr. 2000	20.20	1.12	0.055
4th Qtr. 2000	20.96	1.19	0.057
1st Qtr. 2001	20.26	1.35	0.067
2nd Qtr. 2001	20.30	1.40	0.069
3rd Qtr. 2001	19.94	1.37	0.069
4th Qtr. 2001	19.40	1.34	0.069
1st Qtr. 2002	20.25	1.38	0.068
2nd Qtr. 2002	19.03	1.39	0.073
3rd Qtr. 2002	17.16	1.51	0.073 (a)
4th Qtr. 2002	16.98	1.59	0.073 (a)
1st Qtr. 2003	17.23	1.50	0.073 (a)
2nd Qtr. 2003	17.03	1.53	0.091
3rd Qtr. 2003	17.07	1.61	0.095
4th Qtr. 2003	16.89	1.55	0.092
1st Qtr. 2004	17.22	1.50	0.087
2nd Qtr. 2004	17.42	1.50	0.087 (b)

(a) Reduced by use of unused Schools and Libraries funds. Would otherwise have ranged between 0.087 and 0.093.
(b) Reduced by use of surplus Schools and Libraries funds. Would otherwise have been 0.099.

Source: Contribution Factor Public Notices.

II. CONTROLLING THE CONTRIBUTION FACTOR

Absent other action by the Commission, such as the use of surplus funds, determining the contribution factor is essentially a simple calculation: The total requirements of the USF are divided by total interstate and international revenues. As a mathematical exercise, then, the factor can be reduced by increasing the amount of revenues in the denominator, or by decreasing the fund requirements, or both.

A. Increasing the revenues subject to contribution

The contribution base has remained remarkably stable over the last seven quarters. Many parties are concerned, however, about the long-term sustainability of the revenue base.

Wireless plans and bundling: The main concerns over the level of revenues are the growth of broad wireless plans and the bundling of inter- and intrastate services, which make the determination of interstate revenues difficult. NASUCA's February 28, 2003 comments offered two solutions to these problems: either the use of a time-tested allocator such as the 25% used for allocating the cost of the local loop, or, indeed, a 100% interstate allocation -- for universal service purposes -- of the revenues from inter/intrastate bundles.[2] This could also work on a carrier-specific basis: If a carrier claimed that it could not determine the percentage of interstate revenue in a bundle, the burden would be on that carrier to demonstrate why 100% of the revenues should not be treated as interstate.

Broadband and VoIP: Other concerns include the treatment of broadband facilities used for Internet access,[3] and the growth in voice over Internet protocol service.[4] The Commission has frequently noted that these are interstate, not intrastate, services.[5] If they are interstate services, then 100% of the revenues from these services should be subject to assessment for the federal universal service fund. Even if the services are

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[2] Consumers Union, et al.'s excellent discussion of the impossibility exception provides specific justification for a 100% allocation. Consumers Union, et al. Comments (April 16, 2003) at 11-16. The Fifth Circuit did not address the issue of bundled services or the impossibility doctrine in determining that the Commission lacked authority to assess intrastate revenues. *Texas Office of Public Utility Counsel v. FCC* ("*TOPUC I*"), 183 F.3d 393, 446-448 (5th Cir. 1999).

[3] This includes both digital subscriber line service and cable modem service. See *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003).

[4] As NASUCA has previously explained, "broadband Internet access service" (as the term is used by the Commission) is really a bundle consisting of a telecommunications service, the broadband "pipe," combined with an information service, Internet access.

[5] See *In the Matter of IP-Enabled Services*, WC Docket 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. March 10, 2004).

mixed inter- and intrastate services, a 100% interstate allocation -- for universal service purposes -- of the revenues from broadband and VoIP services would be appropriate.[6]

The fact that these services do not receive universal service funding is irrelevant to whether they should be required to pay into the universal service fund: First, long distance providers ("IXCs") do not receive universal service funds, despite the fact that interstate long distance revenues have traditionally been the primary source of funding for the federal fund. Second, many non-rural local carriers receive no funding, despite the fact that they pay into the fund based on their subscriber line charges being interstate revenues. The very nature of the fund dictates that there will be imbalances, by industry and indeed by state, between amounts paid into the fund and benefits received.

B. Controlling the size of the fund

The total requirements of the fund combine the requirements of the high cost fund (for rural and for non-rural carriers), the schools and libraries fund, the low-income fund and the rural telemedicine fund. NASUCA has proposed strategies to ensure the proper use of the fund and thereby limit the burden on consumers.

We can look at the plan components in terms of their size. Together, the components make up the current $6.32 billion fund.[7] The table below shows the growth in the plan segments over time.

[6] See footnote 2. Even if VoIP services are classified as "information services," the Commission should use its discretionary authority under 47 U.S.C. 254(d) and find that the public interest requires VoIP providers to contribute to the USF.

[7] 2Q04 fund components annualized.

TABLE 2
COMPONENTS OF THE UNIVERSAL SERVICE FUND
($ millions)

Quarterly	Non-rural High Cost	Rural High Cost	Low Income Support	Schools and Libraries	Rural Health Care	Total
1Q2000 (a)(b)	$58.3	$436.9	$124.4	$491.9	$2.5	$1114.0
1Q2001 (a)	$218.4	$448.8	$164.4	$527.4	$1.8	$1360.8
1Q2002 (a)	$214.3	$468.7	$158.7	$559.5	$4.8	$1406.0
1Q2003	$221.0	$605.1	$186.1	$526.3	$3.2	$1541.7
1Q2004	$226.1	$663.4	$163.3	$511.7	$14.7	$1579.2
Annualized						
Year 2000	$233.3	$1,747.5	$497.5	$1,967.7	$10.0	$4456.0
Year 2001	$873.6	$1,795.3	$657.5	$2,109.4	$7.3	$5443.2
Year 2002	$857.2	$1,874.6	$635.0	$2,238.1	$19.3	$5624.0
Year 2003	$884.0	$2,420.4	$744.4	$2,105.2	$12.8	$6166.8
Year 2004	$904.3	$2,653.5	$653.4	$2,046.7	$58.6	$6316.8
Growth from 2000 to 2004	287.61%	51.84%	31.33%	4.02%	486.48%	41.8%
Growth from 2002 to 2004	5.49%	41.55%	2.90%	-8.55%	203.62%	12.3%

(a) Rural high cost support does not include Interstate Common Line Support for these years.
(b) Non-rural high cost support does not include Interstate Access Support for these years.

Source: Contribution Factor Public Notices.

In order of size,[8] the components, together with NASUCA's primary recommendations, are:

Rural high cost ($2.66 billion) -- NASUCA's primary recommendation is to restrict support to primary lines (see Attachment 2). The Commission should apply rigorous tests to the designation of all ETCs, including competitive ETCs ("CETCs") (see below). The Commission should expeditiously move to a forward looking cost test for rural carriers with more than 50,000 access lines. The Commission should use an ETC's entire operation within a state to determine eligibility for support.

Schools and Libraries ($2.05 billion)[9]: Since its inception, the Schools and Libraries fund has been capped at $2.25 billion annually. Issues for managing this component are under consideration *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No 02-6.[10]

Non-rural high cost ($904.3 million): Primary line and CETC restrictions should apply for non-rural carriers as well. The Commission should continue the current practice of statewide cost averaging: Where statewide average cost for a non-rural carrier is below the relevant benchmark,[11] it is appropriate for support to be an intrastate issue. If non-rural carriers are evaluated on a more granular basis, the result would be tremendous growth in the size of the fund or, if the size of the non-rural fund remained limited, extreme dilution of support.

Low income ($653.4 million): Comments have been received on the Joint Board recommendation, and the stakeholders are awaiting a Commission decision.[12]

Rural health care ($58.6 million): This component remains minimal. The Commission is examining ways to give this component greater impact.[13]

The high cost funds: The high cost funds (rural and non-rural) together represent 56% of the fund, up from 44% in 2000; the high cost funds have grown 80% since 2000.[14] Controlling the high-cost segment is obviously the key to controlling the overall

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[8] 2Q04 annualized.

[9] Note that the schools and libraries fund is the slowest-growing component.

[10] See NASUCA Comments (March 11, 2004).

[11] Order on Remand, FCC 03-249 (rel. October 27, 2003), ¶¶ 49, 64.

[12] Note that the low-income fund demonstrably and directly benefits individual consumers.

[13] *In the Matter of Rural Health Care Support Mechanism*, CC Docket 02-60, Notice of Proposed Rulemaking, FCC 03-288 (rel. November 17, 2003).

[14] The rural health care fund has had a higher growth rate, but still remains at less than 1% of the entire fund.

fund. There are two key issues for controlling the high cost segment. One is restricting support to primary lines. That is addressed in Attachment 2.

ETCs: The other issue is ETCs. The following table shows high cost funding for CETCs and total high cost funding over the last four quarters:

TABLE 3
CETC AND TOTAL HIGH COST FUNDING ($ millions)

Quarter	CETC funding	Total high cost funding	CETC funding as % of total
3Q03[15]	$61.6	$853.4	7.2%
4Q03[16]	$62.9	$857.8	7.3%
1Q04[17]	$94.5	$889.1	10.6%
2Q04[18]	$111.5	$909.6	12.3%

These numbers show that CETCs are consuming an ever-growing amount of the high-cost fund. In fact, 89% of the growth of the fund over the last four quarters can be attributed to CETCs.[19] The Commission took a first (limiting) step toward ensuring that the designation of CETCs is in the public interest in *Virginia Cellular*.[20] The Commission should immediately apply the *Virginia Cellular* principles to all wireless and other competitive ETCs, and should require states to do the same for the ETCs they have designated.

The Joint Board Recommendation is a significant additional step, but the measures proposed by NASUCA would add force to the Joint Board's standards.[21] Key recommendations include the offering of a flat rate package, access to E911, equal access

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[15] *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2003*, USAC (May 2, 2003), at 12-17.

[16] *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2003*, USAC (August 1, 2003), at 8-16.

[17] *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2004*, USAC (October 31, 2003), at 8-17.

[18] *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2004*, USAC (January 30, 2004), at 7-15.

[19] In 2003, 96% of the CETC high-cost funds went to wireless ETCs. USAC 2003 Annual Report, Appendix B. In 2002, by contrast, 94% of the CETC high-cost funds went to wireless ETCs. USAC 2002 Annual Report, Appendix B.

[20] *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) ("*Virginia Cellular*").

[21] See NASUCA Reply Comments (May 16, 2003) at 27-30.

to long distance carriers, and submission to state consumer protection regulations. (These recommendations do not necessarily limit the fund, but ensure that the ETC operates in the public interest.[22])

For rural carriers, the Commission should also adopt the economic public interest benchmarks proposed by Joint Board member Billy Jack Gregg.[23] Further, in rural carrier areas, the Commission should base support for CETCs on the CETC's cost, but should cap support at the rural ILEC's cost. If the CETC's cost is higher than the ILEC's, support at the CETC's cost would be subsidizing competition.

As previously noted, if all wireless carriers became ETCs this would add $2 billion (27%) to the Staff-projected 2007 fund. The measures discussed here and in Attachment 2 will prevent this level of (unnecessary) growth.

III. RETAINING THE CURRENT CONTRIBUTION MECHANISM

A. The current mechanism

The FCC Staff Study showed that the current revenue-based mechanism is as sustainable for the near-term as any other of the proposed mechanisms.[24] None of the proposed access-based mechanisms -- based on per-line contributions or per-number

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[22] If it is more difficult for wireless carriers to show that their services need support, that their calling plans are affordable, and that they provide service that meets quality and reliability standards appropriate for carriers of last resort, then it *should* be harder for them to qualify to receive support.

[23] Mr. Gregg is Director of the Consumer Advocate Division for the State of West Virginia. The proposal was first discussed at the en banc meeting of the Joint Board in Denver, Colorado on July 31, 2003. The Commission did not have this proposal in the record to consider in *Virginia Cellular*.

The proposal is that in rural study areas receiving $30 per line per month in support or more, it should be presumed that only one ETC -- for now, the ILEC -- should be designated. In rural study areas receiving $20 per line per month or more, but less than $30 per line per month, it should be presumed that only one ETC in addition to the ILEC should be designated. There should be no presumed limit on the number of ETCs in rural areas receiving less than $20 per line per month in support.

These presumptive benchmarks are based on the average amount of support for all study areas ($30.74 per line per month) and the median amount of support for all study areas ($18.33). These presumptive benchmarks clearly identify high-cost areas where it is not in the public interest to subsidize an unlimited number of ETCs.

Based on data published by USAC, study areas with support of $20 per line per month or more represent only 1.7% of access lines in the United States, but receive 45% of total high-cost support. Commission data requests in pending ETC applications have attempted to get at some of the same high-cost issues by asking for information, such as customer density in application areas. Support per line data distills all cost-influencing factors - such as density, distance and topography – into readily available information.

[24] See NASUCA Reply Comments (May 16, 2003) at 2, 7-11.

contributions -- would have been able to weather similar increases in the fund without concomitant increases in contributions.

The current mechanism is, in concept, both equitable and non-discriminatory, and has been upheld by the courts.[25] There is no need to adopt a radically-different connection-based mechanism that assesses universal service support on carriers and their customers based on access to, not usage of, the interstate network.

Neither increased fund size nor declining revenue base supports the radical change encompassed in the varied proposals of numerous parties for a connection-based mechanism. The better course, as consistently argued by NASUCA and many others, would be to combine restraint of the fund with further improvements to the revenue-based mechanism.

Equally importantly, the Staff Study does not include any consideration of the costs to the carriers of implementing any of the proposed mechanisms. Given the carriers' complaints about the effort required, and the cost, of minor changes to the current mechanism,[26] the costs of these massive structural changes cannot be ignored.

B. The results of the Staff Study show that each of the three alternative methodologies unreasonably burdens residential and small business consumers.

The record is clear that the connection-based methods burden residential and small business customers.[27] These methods, by their very nature, also specifically increase the burden of universal service on low-use customers.

C. The results of the Staff Study show that each of the three alternative methodologies allows interexchange carriers to avoid responsibility for contributing to the federal USF, contrary to 47 U.S.C. 254(d).

The Act directs that all interstate carriers shall contribute to the USF and requires that such contributions be "equitable and nondiscriminatory." 47 U.S.C. 254(d). As the record -- specifically the Staff Study -- shows, the connection-based mechanisms allow interstate carriers that do not also offer local service to evade almost all responsibility for funding universal service.[28]

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[25] See *TOPUC I*, 183 F.3d at 426-430.

[26] See CC Docket 96-45 *et al*., SBC Petition for Reconsideration (January 29, 2003) at 6; *id*., Verizon Comments on Petitions for Reconsideration (February 27, 2003) at 4.

[27] See NASUCA Reply Comments on Staff Study of Contribution Mechanisms (May 16, 2003) at 24-26.

[28] Id. at 27-29.

D. The lack of consensus on the mechanisms

Large ILECs variously support the current mechanism and each of the three access-based proposals (or variants thereof). Smaller ILECs either support the current mechanism or one -- and only one -- of the connection-based mechanisms. Wireless carriers either support the current mechanism or express support for one of the connection-based mechanism as the best of a bad lot. Consumer advocates support the revenue-based mechanism, except for Ad Hoc, which supports the numbers-based mechanism.[29] AT&T and MCI, the only IXCs commenting, support two different connection-based mechanisms.

On the other hand, each of the three connection-based proposals is opposed by various consumer advocates, wireless carriers, and ILECs.

None of the commenters critical of the revenue-based mechanism have shown that their preferred mechanism will be able better to adjust to growth in the fund. This is true for whichever of the three proposals, or variant of the three, they support.

Fundamentally, none of the supporters of a connection-based mechanism explain why it is lawful or reasonable to assess universal service contributions based on access to, rather than usage of, the interstate network.[30] That basic error is reason enough to reject the connection-based proposals. Further, each of the proposals will add to the burden on residential and small business customers, and unlawfully allow many carriers to evade their duty under the law to support universal service.[31]

E. Conclusion

The current revenue-based structure of the contribution mechanism should be retained. Things that *are not* necessary to preserve the federal universal service fund include rate rebalancing, increasing intrastate rates to maximum levels deemed to be affordable, or removing implicit support on the intrastate level.

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[29] The numbers-based mechanism favors the large customers represented by Ad Hoc.

[30] See Supplemental Comments of NASUCA (2/28/03) at 17-19.

[31] Id. at 20-21.

ATTACHMENT 2

THE USF SHOULD SUPPORT ONLY PRIMARY LINES.

In comments filed in May 2003, NASUCA noted that the then-current impact on the fund of serving only primary lines would be to eliminate $350M with the long-run impact being preventing some $2B in growth in the fund. Under these circumstances, those supporting continuing support for multiple lines per household should bear a heavy burden of persuasion.

Statutory purpose: Fundamentally, providing support for multiple lines per household -- whether those are wirelines or wireless connections -- violates the central purpose of § 254 of the Act: that this Commission establish universal service programs to support the basic services designated under § 254(c)(1), and no other services.[1] Sec. 254(e) says that federal universal support should be used only for the purposes specified in the Act.

Second lines do not meet the test. This is most obviously true for second wirelines, because they do not meet the § 254(c)(1)(A)-(D) tests. They are not vital for the public interest, and they have not been subscribed to by anywhere near a majority of customers exercising their choices in a competitive environment, per § 254(c)(1)(B).[2]

On the other hand, given the number of wireless subscribers, it might be argued that wireless service meets the test of § 254(c)(1)(B) -- being subscribed to by a majority of customers. As the Commission noted in the *Triennial Review Order*, however, wireless service is most appropriately characterized as a supplement to wireline service.[3] The true test under § 254(c)(1) is, therefore, not the total over 150 million wireless access lines[4] -- most of which are used as supplements to wireline service -- but the 3-5% of wireless subscribers who have made the competitive choice and use their wireless phones exclusively.[5] This is no majority of consumers.

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[1] See § 254(c)(3), which allows the Commission to add other service for schools and libraries and health care providers.

[2] The Commission Staff Study estimated that there are 1.16 wirelines per household. cite. Thus at most 16% of households have subscribed to second wirelines.

[3] Report and Order and Order on Remand, *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 et al., FCC 03-36 (rel. August 21, 2003) ("*Triennial Review Order*"), ¶ 445.

[4] According to the Cellular Telecommunications and Internet Association. See http://www.wow-com.com/.

[5] *Triennial Review Order*, ¶ 445.

Reasons to support all lines are insufficient: Proponents of supporting all lines of all networks have claimed that such support is necessary for:

- Supporting entire networks
- Upgrading and building out new networks
- Promoting mobility
- Funding competitive entry.[6]
- Funding new investment opportunities
- Maintaining revenue streams (or ensuring total cost recovery) for small telephone companies[7]

Although these arguments may describe secondary benefits of universal service support, none of these issues touch on the real purpose for the federal universal service funds: providing basic access to all Americans.

Interestingly, both incumbents and competitors oppose limiting support only to primary lines. The ILECs say that a primary line restriction would not be competitively neutral because they would be harmed; wireless ETCs say that the restriction would not be competitively neutral because they would be harmed. The fact is that limiting support to primary lines will ensure that the high cost support system is competitively neutral for all parties, and that all ETCs will compete for the universal service support.[8] They cannot both be right.

As proposed by NASUCA, when a CETC is designated in a rural carrier's territory, there should be a freeze on the level of per-line support. This, coupled with limiting support to primary lines, will ensure that the presence of a CETC will not *increase* universal service funding, as is currently the case.

Reasonably comparable rural rates: Those who argue that the USF must support all lines base much of their argument on the Act's goal that rural services and rates be reasonably comparable to urban services and rates. Because urban customers have access to multiple lines from multiple providers, they argue, so must rural customers.

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[6] *Virginia Cellular* moved away from that purpose.

[7] Means such as those recommended by the Joint Board (see Recommended Decision at ¶¶ 73-80) may be used to ease the transition away from support for multiple lines for rural carriers.

[8] It must be remembered that there will be no competition for universal service support unless and until an additional ETC is designated within a study area. As discussed above, the states and the Commission should restrict the number of ETCs in rural study areas receiving high levels of support.

Many have argued that limiting support to primary lines will automatically or inevitably raise the price of second wirelines in rural areas, resulting in second line prices that are no longer reasonably comparable in price to urban second lines. These arguments overlook a number of key factors:

- Second line service has minimal incremental cost
- In the recent Order on Remand, the Commission determined that rural rates for non-rural carriers that are within two standard deviations of the national average urban rate will be deemed reasonably comparable to urban rates.[9] Using this standard, rural second line rates that are within two standard deviations of the national urban rate for second lines would also be reasonably comparable to urban second line rates.[10] There has been no showing that the withdrawal of federal support from second lines would produce rural second line rates that are in excess of this standard.
- This is particularly so because the rates for second lines remain within the jurisdiction of state ratemaking and universal service efforts.

The Act does not direct that rural rates will be equal to urban rates. Rural rates are supposed to be "reasonably comparable" to urban rates. That's all the law directs.

Others have argued that limiting support to primary lines will limit the growth of wireless service. These arguments are also groundless. First, wireless carriers have historically served rural areas and built out their networks without federal support (as contrasted to ILECs that have always had such support in one form or another).

Second, no one makes the claim that rural wireless customers are entitled to receive service at rates that are reasonably comparable to urban wireline rates. The comparison should be to urban wireless rates. There has been no showing that rural wireless customers will pay rates that are not reasonably comparable to urban wireless rates if support for second lines is eliminated. Again, there is no requirement that rural rates be *equal to* urban rates.

Serving a single line per household is competitively neutral. In fact, it appropriately requires carriers to compete in order to receive the universal service support intended for the services defined pursuant to § 254(c)(1).

Practical issues: Opponents of a primary line support policy argue that it will difficult to determine which line is primary and which lines are not. NASUCA believes that customers should be allowed to choose which line is primary for universal service purposes. Allowing the customer to choose is the ultimate expression of the consumer

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[9] Order on Remand, ¶ 38.

[10] Urban second line rates tend to be equal to primary line rates.

sovereignty that is supposed to apply in a competitive market. It should be recalled that concerns over slamming arise only where customers can choose.

Although there may be practical difficulties in transitioning to a primary line support system, these administrative issues can be overcome. Carriers should be required to submit uniform ballots to customers and retain all returned ballots for future audit. Support for the lines of customers not submitting ballots will default to the incumbent carrier. Customers should be permitted to change primary line designation only once every six months. The primary line for customers submitting multiple ballots should be the first one postmarked. Carriers would report the number of primary lines to USAC on a quarterly basis. See the additional documents for principles and suggestions for supporting only primary lines.

The difficulties in identifying primary lines -- whatever they might be -- do not justify continuing to support all lines. And no one seriously contends that the cost of identifying primary lines outweighs the cost of continuing to support those lines.

In 1996, the Joint Board originally proposed limiting support only to primary lines. Again in 2004 the Joint Board has recommended basing support on primary lines. It is time for the Commission to finally adopt this position, which best carries out the fundamental promise of the Act: affordable access to the public switched network for all Americans -- even those in rural and high-cost areas.

Conclusion: As noted above, in 2003, NASUCA estimated that restricting support to primary lines would save the high-cost fund $336 million ($293 million in wireline second lines -- being 10% of the wireline total of high-cost support -- and $43 million for wireless-- being all but 4% of the total wireless support).[11] On the assumption that penetration of wireline second lines has continued to decline, the wireline amount might now be somewhat less (say $275 million). Yet in 2003, wireless carriers received approximately $120 million in high-cost funding. Eliminating all but 4% of that amount would save the fund almost $115 million, for a total savings of $390 million, an amount representing more than 12% of current total high cost funding.

For the long run, the impact on the fund would essentially be to prevent the estimated $2 billion in growth that would result from all wireless carriers across the country becoming ETCs. Wireless carriers (and other CETCs) that won the customer's primary line selection would receive support; support would be removed from wireline carriers that lost the line, with the net result being a $2 billion savings for the fund.

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[11] See NASUCA Reply Comments (May 16, 2003) at 17-18.